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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,866	02/22/2002	Mark E. Kelly	MSC-23309-1	8743

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EXAMINER

MENDOZA, MICHAEL G

ART UNIT PAPER NUMBER

3731

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/087,866

Applicant(s)

KELLY ET AL.

Examiner

Michael G. Mendoza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 58-67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 58-67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. Applicant's arguments with respect to claims 1-57 have been considered but are moot in view of the new ground(s) of rejection. The Applicant argues that Tripp, Jr. et al. teaches away from the invention. The Examiner points out that Tripp, Jr. et al. is not a reference relied upon in the previous rejection. The Applicant argues that Cramer et al. fails to teach generating a signal corresponding to the oxygen partial pressure in an air mask. However, Cramer et al. does teach that it is known in the art to monitor and generate a signal corresponding to the oxygen partial pressure in a mask (col. 1, lines 12-19). Furthermore, Basham teaches a similar generating a signal corresponding to the oxygen partial pressure in an air mask. As stated in the previous office action, buzzers emit sound through vibratory motion, therefore the buzzer of Cramer et al. functions as a vibrator.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 58-60, 63, and 65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Regarding claims 58 and 65, the addition of the word "type" to an otherwise definite expression extends the scope of the expression so as to render it indefinite. *Ex parte Copenhaver*, 109 USPQ 118 (Bd. App. 1955).

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5. Claim 59 recites the limitation "the microphone VOX" in line 3 and 4. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 63 recites the limitation "the tactile comparator" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

7. Claims 58 and 60-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cramer et al. 4109509 in view of Debe et al. 5659296 in further view of Basham et al. 3675649.

8. As to claims 58, 61, 62, 65-67, Cramer et al. teaches an apparatus for monitoring an oxygen partial pressure in an air mask adapted to deliver oxygen system to an operator, the air mask having an interior surface (col. 1, lines 13-15), the apparatus comprising: a sensor 76 capable of providing an output signal corresponding to the oxygen partial pressure; a comparator 114 connected to the sensor and configured to compare the output signal with a reference signal corresponding to a desired oxygen partial pressure; a power source 120 connected to the sensor and the comparator, the power source being independent of the oxygen system; an amplifier connected to the sensor and the comparator and configured to amplify the output signal (col. 3, lines 31-41) It should be noted that Cramer et al. fails to teach a vibrating motor.

9. Debe et al. teaches an apparatus with a common vibration motor on a mask for providing a tactile indication or warning of unwanted conditions. Therefore it would have been obvious to one having ordinary skill in the art to use a vibration motor as an alternative means for warning (col. 8, lines 36-51). It should be further noted that

Cramer/Debe fails to teach wherein the vibrating motor is mounted within the air mask. Debe teaches wherein the vibrating motor is mount on an outer surface of the mask. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the vibrating motor within the air mask, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. The vibrating motor would perform the same function whether inside or outside the air mask.

10. It should be further noted that Cramer/Debe fails to teach wherein the sensor is positioned within the air mask. Basham et al. teach a common mask with a common sensor mounted in an air mask for monitoring oxygen partial pressure. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to mount the sensor of Basham in a mask for generating a signal in accordance with conditions in the mask and to maintain breathable gas conditions in the mask (see abstract).

11. As to claim 60, 63, Cramer/Debe/Basham discloses the claime dinvention except for wherein the comparator and power source are mounted within the air mask. It would have been obvious to one having ordinary skill in the art at the time the invention was made to mount the comparator and power source within the air mask, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

12. As to claim 64, Cramer/Debe/Basham fails to specifically teach wherein the power source is a communication system power source. However, it would have been

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obvious to one having ordinary skill in the art at the time the invention was made to use the power source as recited in the claim because the particulars of the power source are a mere design choice and are mechanical expedients of each other. Furthermore, the applicant has not disclosed why the particulars of the power source are of importance or solve a state problem or provide an advantage over the prior art.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dawson can be reached on (571) 272-4694. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MM



GLENN K. DAWSON
PRIMARY EXAMINER